

# McNamara Declaration

## Exhibit 45

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

HACHETTE BOOK GROUP, INC.,  
HARPERCOLLINS PUBLISHERS LLC,  
JOHN WILEY & SONS, INC., and  
PENGUIN RANDOM HOUSE LLC,

Plaintiffs,

vs.

No. 1:20-cv-04160-JGK

INTERNET ARCHIVE and DOES 1  
through 5, inclusive,  
Defendants.

\_\_\_\_\_ /

VIDEOTAPED RULE 30(b)(6) AND PERSONAL  
DEPOSITION OF JACQUES CRESSATY

Remote Zoom Proceedings  
San Francisco, California  
Friday, October 22, 2021

REPORTED BY:

LESLIE ROCKWOOD ROSAS, RPR, CSR 3462

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Job No. 4857811

1 person?

2 A. I am not.

3 Q. Are you currently on -- are you currently an  
4 officer of any corporation other than Internet Archive?

5 A. I am not.

6 Q. Have you been an officer of any corporation  
7 other than Internet Archive?

8 A. Yes.

9 Q. Which ones?

10 A. I was the secretary for Television Archive.

11 Q. And is the Television Archive now known as Open  
12 Library of Richmond?

13 A. That is correct.

14 Q. Okay. And we're going to come back to this, but  
15 I just want to get a complete list.

16 Are you a -- or were you an officer of any other  
17 entities apart from Open Library of Richmond and Internet  
18 Archive?

19 A. Yes, I was. I wish I had a list.

20 Q. I might be able to help you out.

21 How about Better World Libraries?

22 A. Yes, I was.

23 Q. And you were the secretary of that organization;  
24 correct?

25 A. I was, yes.

1 Q. And going back to Open Library of Richmond, you  
2 were the secretary of that organization; right?

3 A. That is correct.

4 Q. How about the Kahle-Austin Foundation?

5 A. I was acting secretary.

6 Q. When were you acting secretary?

7 A. From -- I don't recall when I started, but until  
8 the end. Let me -- let me explain why I'm acting  
9 secretary.

10 Q. Please do.

11 A. The Kahle-Austin Foundation board is  
12 Brewster Kahle and Mary Austin and Jeffrey Ubois, and as  
13 a volunteer, because I was not paid, I volunteered my  
14 service to take minutes of board meetings.

15 Q. All right.

16 A. So I was not the secretary. I would take the  
17 minutes, and then the secretary, who is Mary Austin,  
18 would sign -- would review the minutes and sign them.

19 Q. Understood.

20 A. So my job was clerical, basically.

21 Q. Understood.

22 How about the Open Library of Canada? Are you  
23 an officer for that entity?

24 A. Open Library of Canada? I'm -- Open Library of  
25 Canada? I am not, no.

1 Q. How about --

2 A. I'm -- Open Library of Canada, I'm, again,  
3 acting -- acting secretary.

4 Q. Great.

5 And so you provide clerical services for the  
6 company as an acting secretary?

7 A. Correct.

8 Q. How about Open Library of Pennsylvania LLC? Do  
9 you have any involvement with that entity?

10 A. I do. I was one of the managers.

11 Q. And -- were you a member or a manager?

12 A. No, I was a manager.

13 Q. I'm looking down my list. Any other entities  
14 affiliated with Brewster Kahle or Internet Archive other  
15 than the ones we've just discussed?

16 A. I'm sure there's more.

17 Q. Okay. I might revisit this, but I want just to  
18 go back through some of these companies.

19 A. Okay.

20 Q. You mentioned -- we were talking about the Open  
21 Library of Richmond before. What does the Open Library  
22 of Richmond do?

23 MS. LANIER: Objection. Scope.

24 Q. BY MR. BROWNING: You can answer as a personal  
25 witness.

1           A. What do they do? They're 501(c)(3), public  
2 charity, and they make grants.

3           Q. What kind of grants?

4           MS. LANIER: Objection. Scope.

5           Q. BY MR. BROWNING: You can answer.

6           A. They make grants to other nonprofits.

7           Q. And would Internet Archive be one of those  
8 nonprofits?

9           MS. LANIER: Objection. Scope.

10          Q. BY MR. BROWNING: You can answer.

11          A. Yes.

12          Q. Okay. How about Better World Libraries? What  
13 does Better World Libraries do?

14          MS. LANIER: Objection. Scope.

15          MR. BROWNING: For the record, you know, he's an  
16 officer of this country -- country -- company.

17          Q. And you can answer in your capacity as such.

18          MS. LANIER: I'm just trying to make the record  
19 clear, Jack, that any answers he gives to your questions  
20 here would be in his capacity with respect to his  
21 personal knowledge, so --

22          MR. BROWNING: That's fine, so I'll use that as  
23 a shorthand for next time.

24          THE WITNESS: Better World Libraries, I was --  
25 what do they do?

1 Q. BY MR. BROWNING: What do they do?

2 A. Better World Library owns stock in Better World  
3 Books.

4 Q. What is Better World Books?

5 MS. LANIER: Objection. Scope.

6 THE WITNESS: Better World Books is a book  
7 retailer.

8 Q. BY MR. BROWNING: Okay. And does Better World  
9 Libraries own Better World Books?

10 MS. LANIER: Objection. Scope.

11 THE WITNESS: They own the stock.

12 Q. BY MR. BROWNING: Do they own all the stock?

13 A. Yes.

14 MS. LANIER: Objection. Scope.

15 Q. BY MR. BROWNING: Great.

16 And the Kahle-Austin Foundation, what does that  
17 do?

18 MS. LANIER: Objection. Scope.

19 THE WITNESS: Kahle-Austin Foundation is a  
20 family foundation, and they make grants.

21 Q. BY MR. BROWNING: And actually, I'm going to  
22 loop in Open Library of Richmond here, and you can tell  
23 me if it's different, but where does Open Library of  
24 Richmond and the Kahle-Austin Foundation get their money  
25 from?

1 MS. LANIER: Objection. Scope.

2 THE WITNESS: Well, the Kahle-Austin Foundation  
3 is funded by Brewster Kahle.

4 Q. BY MR. BROWNING: From his personal finances?

5 A. Yes.

6 MS. LANIER: Objection. Scope.

7 Q. BY MR. BROWNING: I'm sorry. I believe the  
8 answer was "yes"; is that correct?

9 A. That is correct.

10 Q. And how about Open Library of Richmond, does  
11 Brewster Kahle fund the Open Library of Richmond from his  
12 personal finances?

13 MS. LANIER: Objection. Scope.

14 THE WITNESS: I believe he does.

15 Q. BY MR. BROWNING: Great.

16 And the Open Library of Canada, what does the  
17 Open Library of Canada do?

18 MS. LANIER: Objection. Scope.

19 THE WITNESS: Open Library of Canada makes  
20 grants.

21 Q. BY MR. BROWNING: All right. And the Open  
22 Library of Pennsylvania, what does it do?

23 MS. LANIER: Objection. Scope.

24 THE WITNESS: Open Library of Pennsylvania is an  
25 LLC, and the sole member is Open Library of Richmond, and



1 they own an office building in Fort Washington,  
2 Pennsylvania.

3 Q. BY MR. BROWNING: And I'm asking this to you in  
4 your personal capacity as an officer of all -- of these  
5 companies. Why does Internet Archive -- strike that.

6 I am asking you this question in your capacity  
7 as an officer of all these companies. Why is it  
8 necessary for all of these entities to exist?

9 MS. LANIER: Objection. Vague.

10 Q. BY MR. BROWNING: You can answer.

11 MS. LANIER: Vague as to "necessary."

12 THE WITNESS: I really don't know.

13 Q. BY MR. BROWNING: So all of the companies we  
14 have just talked about are related to Internet Archive;  
15 is that correct?

16 MS. LANIER: Objection. Scope.

17 THE WITNESS: No, they're not.

18 Q. BY MR. BROWNING: But all of the entities we  
19 have just discussed have a link to Brewster Kahle and the  
20 Internet Archive project, written more broadly; is that  
21 correct?

22 MS. LANIER: Objection. Scope.

23 THE WITNESS: They have a link to Brewster  
24 Kahle, yes.

25 Q. BY MR. BROWNING: So I'm trying to understand

1 why it is necessary for all of these linked companies to  
2 exist. What is the purpose?

3 MS. LANIER: Objection. Scope, vague.

4 THE WITNESS: I cannot tell you. This is a  
5 question for Brewster Kahle.

6 Q. BY MR. BROWNING: Do you have -- do you have an  
7 opinion?

8 A. I just follow orders.

9 Q. So Brewster made the decision to create all of  
10 these entities; right?

11 A. Yes, he did.

12 MS. LANIER: Objection. Scope.

13 Q. BY MR. BROWNING: Great.

14 And you just do what Brewster tells you with  
15 respect to these entities?

16 MS. LANIER: Objection. Scope, mischaracterizes  
17 previous testimony.

18 Q. BY MR. BROWNING: You can answer.

19 A. Yes, that is correct.

20 Q. Okay. And as we go through today, if you  
21 remember any other entities that you are an officer of --  
22 or I'm sorry. Strike that.

23 If you recall any other entities related to  
24 Brewster Kahle that you were an officer of, please let me  
25 know. I know sometimes things come up, and I'd

1 appreciate -- I'll probably ask you at the end.

2 A. Yeah, I remember a couple of them.

3 Q. Oh, please tell me.

4 A. There's the Open Library of San Francisco LLC.

5 Q. Okay. Any others?

6 A. The sole member is the Kahle-Austin Foundation.

7 Q. And what does that entity do, the Open Library  
8 of San Francisco?

9 A. It owns --

10 MS. LANIER: Objection. Scope.

11 THE WITNESS: It owns the -- our headquarter at  
12 300 Funston.

13 Q. BY MR. BROWNING: And you are a secretary -- or  
14 you were a secretary of that entity; is that correct?

15 A. I was.

16 Q. And any other entities?

17 A. No, I was not a secretary. It's an LLC. I was  
18 a manager.

19 Q. Thank you for clarifying.

20 Any other entities?

21 A. Yes. I'm trying to think of the name. The  
22 Foundation House.

23 Q. Foundation House?

24 A. LLC.

25 Q. What is that?

1 MS. LANIER: Objection. Scope.

2 THE WITNESS: The LLC owns an apartment building  
3 located at 19th Avenue in San Francisco and Clement  
4 Street. It's an apartment building with 11 units and  
5 garages.

6 Q. BY MR. BROWNING: Okay. And are you a member of  
7 that LLC -- or were you -- sorry. Go ahead.

8 A. I was a manager.

9 Q. All right. Any other entities?

10 A. Open Library of Western Pennsylvania LLC. Sole  
11 member is the Kahle-Austin -- sole member is the Open  
12 Library of Richmond.

13 Q. And are you a manager of that -- or were you a  
14 manager of that LLC?

15 A. I was.

16 Q. And what does the Open Library of Western  
17 Pennsylvania do?

18 MS. LANIER: Objection. Scope.

19 THE WITNESS: It -- it holds a warehouse.

20 Q. BY MR. BROWNING: What's in that warehouse?

21 MS. LANIER: Objection. Scope.

22 THE WITNESS: Physical collections.

23 Q. BY MR. BROWNING: Collections of what?

24 MS. LANIER: Objection. Scope.

25 THE WITNESS: Books, records. I think mostly

1 books. I am not 100 percent sure.

2 Q. BY MR. BROWNING: Understood.

3 Any other entities come to mind?

4 A. Not that I can think of right now.

5 Q. So we are going to -- actually, I have one more  
6 question on this front.

7 When you retired earlier this year, did you  
8 retire from your position as an officer of all of the  
9 companies we have just discussed?

10 A. Yes and no.

11 Q. So which companies yes, and which companies no?

12 A. I did -- I did retire from all of the companies,  
13 but some of them it was prior to my retirement.

14 Q. Understood.

15 But you are now currently retired from all of  
16 these companies?

17 A. That is correct.

18 Q. Great.

19 And for all of these companies, were your duties  
20 clerical?

21 A. Could you define that?

22 Q. Sure.

23 When we were discussing your role as secretary  
24 of Internet Archive previously, you said your duties were  
25 clerical in nature. Were -- did you have similar duties

1           A. I don't know what the IRS considers a related  
2 organization, but I've -- I would think it's money that  
3 we receive from other nonprofit that are within the  
4 sphere of the -- what I call the Khale-Austin Empire.

5           Q. That's a helpful definition, Mr. Cressaty.

6                     So the Khale-Austin Empire, as you've defined  
7 it, are all of the entities related to Internet Archive  
8 or Brewster Kahle. Is that a fair definition?

9           MS. LANIER: Objection.

10           THE WITNESS: No, not -- not related to -- could  
11 you repeat that?

12           Q. BY MR. BROWNING: Sure.

13                     I'm just trying -- so you mentioned the  
14 Khale-Austin Empire, and I'm just trying to be precise  
15 because there are so many entities floating about.

16                     Let's try it this way: Is it fair to say that  
17 the Khale-Austin Empire includes all the companies we  
18 discussed prior for which you were an officer?

19           A. Except the Kahle-Austin Foundation. I'm not an  
20 officer of the Kahle-Austin Foundation.

21           Q. Yes.

22                     So those entities plus the Kahle-Austin  
23 Foundation would be part of the Khale-Austin Empire; is  
24 that correct?

25           A. Yeah, that's -- the Khale-Austin Empire is my --

1 is my definition of it.

2 Q. Understood.

3 And so I think I can help you out with related  
4 entities. If we scroll down to Schedule R -- and I'll  
5 get you a page number in a second, but it's towards the  
6 back. It is page 43, Schedule R.

7 And let me know when you're there.

8 A. Forty-three, did you say?

9 Q. Yes. And it's Schedule R in the top left-hand  
10 corner.

11 A. Yep, I'm there.

12 Q. It says next to that, "Related Organization and  
13 Unrelated Partnerships."

14 Do you see that?

15 A. Yeah.

16 Q. Okay. We're going to go down a couple more  
17 pages, to page 45, the heading "Transactions With Related  
18 Organizations."

19 A. Yes.

20 Q. Okay. And do you see at the bottom there are  
21 two related organizations named -- or one related  
22 organization named twice, Open Library of Richmond, Inc.?

23 Do you see that?

24 A. I do.

25 Q. And on that top entry, it says, "Open Library of

1 Richmond, Inc." Then next to that, it says, "Transaction  
2 type C." And if you look up, transaction type C is  
3 defined as, "Gift, grant or capital contribution from  
4 related organizations."

5 Do you see that?

6 A. I do.

7 Q. And then next to "Transactions type," it says,  
8 "Amount involved: \$4,840,000."

9 Do you see that?

10 A. I do.

11 Q. Would you agree with me that this document  
12 indicates that Open Library of Richmond paid Internet  
13 Archive \$4,840,000 in 2016?

14 A. Yeah. As a grant, yes.

15 Q. Great.

16 Do you know where that money came from -- or  
17 originated?

18 MS. LANIER: Objection. Scope.

19 THE WITNESS: I -- I don't know for sure,  
20 because -- well, let me explain something.

21 Q. BY MR. BROWNING: Please do.

22 A. Brewster Kahle would donate funds to support  
23 Internet Archive, and he would use various ways of  
24 channeling these funds. And I am not privy to how these  
25 were channeled. I'm not privy to how he channeled -- you



1 company for that?

2 A. That's correct.

3 Q. And miscellaneous \$5,000, I'm just curious --  
4 curious to know where that \$5,000 came from.

5 A. I have no idea.

6 Q. It seems like it wasn't a big part of your  
7 revenue, so I'll let you off the hook.

8 Can we go to the next page, page 10? And this  
9 is the Statement of Functional Expenses.

10 Let me know when you're there.

11 A. I'm there.

12 Q. And correct me if I'm wrong, but this part of  
13 the form requires you to list Internet Archive -- list  
14 and categorize Internet Archive's expenses; right?

15 A. That is correct.

16 Q. Okay. And the first line on that is, "Grants  
17 and assistance to domestic organizations and domestic  
18 governments."

19 And the expenses recorded are 65,183; right?

20 A. Yes.

21 Q. That is money Internet Archive paid to domestic  
22 organizations and domestic governments; right?

23 A. That is correct.

24 Q. Two lines down, on number 3, we've got a similar  
25 category, but this is, "Grants and assistance to foreign

1 organizations, foreign governments and foreign  
2 individuals."

3 And there the expenses are \$842,611. Do you  
4 know which foreign organizations, governments and foreign  
5 individuals received that money?

6 A. Yes. IA Canada -- Internet Archive Canada and  
7 Internet Archive UK, Limited.

8 Q. Are you aware of any other grants to foreign  
9 organizations?

10 A. No.

11 Q. Do you know what the grants to IA Canada and IA  
12 UK were for?

13 A. Sure.

14 Q. What were they for?

15 A. Internet Archive Canada -- and this is 1996?

16 Q. 2000 -- or, sorry.

17 A. I mean 2016?

18 Q. Right.

19 A. The way we -- so Internet Archive Canada is  
20 essentially a scanning center in Toronto. And the reason  
21 we set up Internet Archive Canada as a nonprofit in  
22 Canada was we were advised by our friends in Canada that  
23 if we wanted to get more business from universities and  
24 libraries, that it would help to be nonprofits.

25 So we created a nonprofit Internet Archive

1 Canada. And it is essentially a scanning center. And,  
2 in fact, it was our first scanning center ever.

3 All the contracts were written between Canadian  
4 customers and Internet Archive.

5 Q. Internet Archive US, the 501 --

6 A. Internet Archive, yeah.

7 Q. Okay.

8 A. We -- so we would get all the revenues, but they  
9 would incur expenses in Canada. Like, payroll and office  
10 supplies and so on.

11 So what they would do is we would send them on a  
12 regular basis, funds through the -- to the payroll  
13 company so they could meet the payroll.

14 Q. And was Internet Archive Canada collecting  
15 revenue on its own books?

16 A. In 1996, no.

17 Q. Or 2016, rather; right?

18 A. I mean, 2016, no.

19 Q. Does it currently receive revenue on its own  
20 books?

21 A. Yes. A couple of years ago we decided that we  
22 would switch that. And now the majority of the contracts  
23 are in Canadian dollars, payable in Canada.

24 Q. Got it.

25 But for 2016, any revenue that was garnered by

1 the IA Canada scanning center is on Internet Archive's  
2 books; right?

3 A. That is correct.

4 Q. And is it the same deal with Internet Archive  
5 UK, that Internet Archive US, for want of a better term,  
6 is forwarding them money to operate?

7 A. That is correct.

8 Q. Got it.

9 I'm going to go through --

10 A. And it's still the case nowadays for UK.

11 Q. Got it.

12 I'm going to go through this quick, because I  
13 think it's all standard and pretty self-explanatory.

14 But compensation of current officers, directors,  
15 trustees and key employees, \$141,545. That is for  
16 payments to board members like yourself; right? Or  
17 not -- strike that.

18 Not board members, but officers like yourself;  
19 right?

20 A. Officers and employees, yes.

21 Q. Okay. I guess my question is: How is that  
22 different from line 7, "Other salaries and wages"? I'm  
23 just trying to understand the distinction.

24 A. I -- I think what they -- the way it was done,  
25 and my recollection is kind of fuzzy on this, but that

1 it's much more complicated than that, but that's kind of  
2 a gross explanation of it.

3 Q. So if I understand you correctly, a 501(c)(3)  
4 corporation needs to pass a test or meet certain  
5 criteria?

6 A. Yes.

7 Q. And this document is recording which of those  
8 tests Internet Archive meets; right?

9 A. Yes.

10 Q. Okay. So if you go to line 10 -- I think this  
11 is what you're mentioning -- there's a checkmark there;  
12 right?

13 A. That is correct.

14 Q. So -- and that category says, "The organization  
15 normally receives more than 33-1/3 percent of its support  
16 from contributions" -- and I'm omitting some language.  
17 And then, two, "No more than 33.3 percent of its support  
18 from gross investment." I'm going to omit the rest of  
19 that.

20 Do you see that?

21 A. Yes.

22 Q. So in plain English, this means that the  
23 Internet Archive is a 501(c)(3) because it receives  
24 33-1/3 percent of its support from contributions,  
25 membership fees and gross receipts from activities

1 related to its functions, and no more of 33-1/3 percent  
2 of its support from gross investment income, unrelated  
3 business taxable income, from business acquired by the  
4 organization after June 30th, 1975. And I apologize.  
5 That's a mouthful.

6 But this records the basis on which Internet  
7 Archive is a 501(c)(3) corporation; correct?

8 A. That is correct. And that test is a five-year  
9 test.

10 Q. So over the last five years, the proportion of  
11 contributions needs to balance out in the ways stated by  
12 this rule; right?

13 A. That is correct.

14 Q. Okay. So going to -- I'm looking up this list  
15 of ways you can be a 501(c)(3). Number 5 says, "An  
16 organization operated for the benefit of a college or  
17 university owned or operated by a governmental unit,"  
18 described in an institute that I won't quote.

19 Do you see that?

20 A. Yes, I do.

21 Q. And Internet Archive does not qualify as a  
22 501(c)(3) under that basis; right?

23 A. It does not, no.

24 MS. LANIER: Sorry.

25 Objection. Calls for a legal conclusion.

1 Q. I think we can slide through some of this to  
2 page -- page 8 of the physical document, but it's page 10  
3 of the PDF.

4 A. Okay.

5 Q. Okay. Do you see the line beginning with the  
6 heading "Donated Assets and Services?"

7 A. No. I'm on page 10 of the PDF.

8 Q. Oh, does it say, "Note A, Nature of Activities  
9 and Significant Accounting Policies"?

10 A. Let me change here. What page of the document  
11 do you want me to be on?

12 Q. Sure. Yeah, it's page -- if you're looking at  
13 the page numbers on the -- what would be paper document,  
14 it's page 8.

15 A. Okay. "Note A, Nature of Activities"?

16 Q. Exactly right. And I'm interested in the  
17 paragraph beginning, "Donated Assets and Services."

18 Do you see that?

19 A. Yes.

20 Q. Okay. So it says, "Donated non-cash assets are  
21 recorded as contributions at their estimated fair values  
22 at the date of donation"; right?

23 A. Yes.

24 Q. Correct me if I'm wrong, but the way I read this  
25 is that Internet Archive needs to record any non-cash

1 assets that it receives from donations and estimate their  
2 fair value; right?

3 A. That's correct.

4 Q. Okay. And then if you go to the next page,  
5 "Note B, Fair Value Estimates." This explains how the  
6 assets are valued; right? Take your time to read it. I  
7 don't -- I don't want to put words in your mouth.

8 A. Okay.

9 Q. So was I correct when I said that Note D starts  
10 by telling you how these assets are fairly valued?

11 A. That is correct.

12 Q. Okay. And then at the bottom, we have a couple  
13 of assets that were valued, Bitcoins and common stock.

14 Do you see that?

15 A. I see it.

16 Q. And my first question is: Do you know where the  
17 Bitcoins came from, who donated them?

18 A. We get Bitcoin donations, and we don't know who  
19 gave it to us because it's Bitcoin.

20 Q. Oh, okay. So --

21 A. But it's on the donation page.

22 Q. So somebody -- do you know if it's a single  
23 donation?

24 A. Oh, no. It's, like, many, many donations.

25 Q. So each year --



1 A. But usually very small.

2 Q. But you don't know who's making those donations;  
3 right?

4 A. No, there's no way you can tell.

5 Q. It could be ISIS, for all you know?

6 A. For all I know.

7 MS. LANIER: Objection. Calls for speculation.  
8 Come on.

9 Q. BY MR. BROWNING: It underlines the point.  
10 But these are small donations of Bitcoin that  
11 are made every review; right?

12 A. Yes.

13 Q. And they are valued as an asset?

14 A. Yes.

15 Q. Okay. Because they are donated?

16 A. (Nods head.)

17 Q. And they have a value as an asset?

18 A. (Nods head.)

19 Q. Okay. Common stock. What stock are we talking  
20 about?

21 A. So we have some donors that say, "I want to make  
22 a donation, and I want to donate stocks." And we give  
23 them information to transfer the stock from their account  
24 to our account at Morgan Stanley. And once we receive  
25 the stock, then Brewster authorizes the sale of the stock

1 Q. And so I'm going to read a bunch of categories  
2 that are blank. But there's: "Art - works of art,"  
3 "Art - historical treasures," "Art - fractional  
4 interests," and "Books and publications." And there's a  
5 bunch of other stuff that -- that they are not checked.

6 Does this mean that Internet Archive did not  
7 receive non-cash contributions of this nature?

8 A. I'm not quite sure I understand your question.

9 Q. Sure.

10 Let's put it another way: According to this  
11 form, did Internet Archive receive contribution of art -  
12 works of arts, art - historical treasures, art -  
13 fractional interest, books and other publications, or any  
14 other category listed before line 25, "Other"?

15 A. No, we did not.

16 Q. And then on line 25, "Other," there's an X mark  
17 indicate- -- strike that.

18 On line 25, "Other," next to the parenthesis, it  
19 says, "Bitcoin"; right?

20 A. Yes, it does.

21 Q. So this was a -- is it correct to say this was a  
22 Bitcoin donation?

23 A. That is correct.

24 Q. And it says there was one item contributed.

25 Do you see that? And I assume that's one

1 Bitcoin or chunk of Bitcoins; right?

2 A. No. That was -- that was \$1 million worth of  
3 Bitcoin.

4 Q. Right.

5 But what I'm trying to figure out is: Was that  
6 donated by one person? Because previously you testified  
7 you got Biocin from a whole bunch of different people.

8 A. No, this --

9 Q. Was this one person?

10 A. This donation was -- is an anonymous donation  
11 from the Pineapple Fund. We don't know who's behind the  
12 Pineapple Fund.

13 But the Pineapple Fund at some point donated to  
14 several charities a big chunk of Bitcoin.

15 Q. And do you know -- what do you know about the  
16 Pineapple Fund?

17 A. Nothing. We tried to figure out who it was, but  
18 we never could figure it out.

19 Q. Do you have any -- who's your best guess?

20 A. Oh, I don't know.

21 MS. LANIER: Objection. Calls for speculation.

22 Q. BY MR. BROWNING: Fair enough.

23 I wish someone -- some random organization would  
24 give me a million dollars worth of Bitcoin. That's a  
25 nice windfall.

1 similar to Schwab or what you call investment banks or,  
2 you know --

3 Q. Okay. The money came --

4 A. Morgan Stanley or, you know. So it came from --  
5 from a DAF, which is a D-A-F, which is donor advised  
6 fund.

7 Q. And who is the donor?

8 A. The donor is -- I don't know who the donor is,  
9 but it's coming from Brewster.

10 Q. So this is Brewster's personal wealth coming  
11 through a mechanism you don't quite understand into  
12 Fidelity Charitable. And that was paid to Internet  
13 Archive, who then paid Open Library of Richmond, who then  
14 purchased Better World Books?

15 A. That is correct.

16 MS. LANIER: Objection. Mischaracterizes  
17 previous testimony.

18 Q. BY MR. BROWNING: I heard -- you answered  
19 correct.

20 MR. BROWNING: But objection noted.

21 Q. Do you know where Brewster got \$16,750,000 from?

22 MS. LANIER: Objection. Calls for speculation,  
23 outside the scope.

24 Q. BY MR. BROWNING: You can answer.

25 A. I do not.

1 A. From prior year smaller amounts?

2 Q. Yes.

3 A. It's typically individual donations that are  
4 earmarked for books.

5 Q. For the purchase of books?

6 A. For the scanning of books.

7 Q. For the scanning of books.

8 So individual donors give you money and say,  
9 "Contribute this to scanning. Pay someone to scan  
10 books"?

11 A. Well, I would say -- I could give \$100 to  
12 Internet Archive and say, "I want that money to go to the  
13 Books Group."

14 Q. Got it.

15 And to your knowledge, does this line include  
16 income from Internet Archive's book sponsorship program?  
17 Actually, let me back up a step.

18 Are you aware that Internet Archive offers a  
19 book sponsorship program?

20 A. I am.

21 Q. And what is your knowledge about what that  
22 program entails?

23 A. It's fairly general. If you have a book that  
24 you are interested in and interested in having a digital  
25 copy of it, you can send us money or you can send us a

1 book plus a donation to cover the cost of -- to cover the  
2 cost of the digitization of that book.

3 Q. Got it.

4 And so if I understand correctly, the deal is  
5 essentially you -- the donor gives Internet Archive money  
6 in excess of the price of the book, and that money covers  
7 the purchase of the book and its scanning?

8 A. That is correct.

9 Q. And potentially other expenses, you know,  
10 related to the -- funding the organization?

11 A. (Nods head.)

12 Q. Is -- sorry. You're nodding "yes"; right?

13 A. Yes, I am.

14 Q. Is that income reported as part of contributed  
15 income on this P&L?

16 A. It should be, yes.

17 Q. Let's keep going down now through the  
18 expenses -- or actually, let me take a step back.

19 At the bottom line -- at the bottom of the  
20 income section, I guess, there's a line that's gross  
21 profit, and at the end there's a -- far right-hand end of  
22 the column it says, "Total," and it looks like the  
23 Internet Archive made \$36,491,732 of gross profit from  
24 its commercial digitization -- book digitization  
25 activities; is that correct? Sorry, between 2011 and

1 2020; is that correct?

2 A. Yes. That's the gross profit, yes. Before  
3 expenses.

4 Q. Right. And we'll get to expenses now.

5 What -- just going through each of these, what  
6 is entailed by administrative expenses?

7 A. It's the portion of administrative expenses that  
8 relates to the Books Group.

9 Q. So that's sort of office management for the  
10 Books Groups, essentially; right?

11 A. That is correct.

12 Q. And what is community outreach?

13 A. Community outreach is the amount of money that  
14 was spent to go visit libraries and obtain contracts to  
15 have them give us their books to digitize.

16 Q. Okay. And that's money you paid employees to do  
17 this, or what was that money for specifically?

18 A. That is money that is -- covers travel expenses,  
19 trade shows, hotels, you know, restaurants, you know,  
20 transportation in general.

21 Q. Got it.

22 A. It's basically a selling expense.

23 Q. Got it.

24 And how about contractors, what's in there?

25 A. Contractors are basically contractors that we

1 Q. And then it had a loss each year from 2017 to  
2 2020; right?

3 A. That is correct.

4 Q. And ultimately, over the ten-year period there  
5 was a \$2,279,859 loss; right?

6 A. That is correct.

7 Q. Do you know why book scanning was no longer  
8 profitable after 2016?

9 A. I do.

10 Q. Why?

11 A. In 2016, the director of books, a gentleman by  
12 the name of Robert Miller, left the organization to take  
13 the CEO post at the concession of library called Lyraris.  
14 It's L-Y-R-A-R-I-S.

15 And Robert Miller was a super salesman. He had  
16 more energy than the Eveready Bunny, and he brought in a  
17 lot of business. When Robert left, Brewster decided that  
18 he will not replace him and he would put the burden of  
19 getting the work to us on the scanning coordinators.  
20 Unfortunately, the scanning coordinators are not equipped  
21 to do that. They're equipped to manage a team of  
22 scanners, and that's about it. That's the number one  
23 factor.

24 The number two factor is our library partners  
25 ran out of books that were out of copyright, so pre-1923,



1 and they're reluctant to give us books that were in  
2 copyright.

3 Q. And are you aware of communications from  
4 libraries telling you that they are wary of scanning  
5 copyrighted books?

6 A. I am not.

7 Q. Well, who told you that then?

8 A. I heard it through the organization.

9 Q. But you can't remember a specific person?

10 A. No.

11 Q. And is it your opinion that book scanning could  
12 be profitable again if Internet Archive had someone like  
13 Robert Miller to bring in more business from libraries?

14 A. Probably not.

15 Q. And that's because why?

16 A. Because libraries are not -- are reluctant to  
17 give us books past 1923 or 1925 now, I think.

18 Q. It is 1925. Understood.

19 MR. BROWNING: Carl, could you queue up the  
20 other profit and loss document, please?

21 MR. MAZUREK: Will do.

22 MS. LANIER: Excuse me. We've been going for  
23 about an hour 20. It may be time for another ten-minute  
24 break, and maybe that will afford your colleagues a  
25 little more time to respond to your email if they have

1 paid royalty payments. What are those for?

2 A. I'm not sure. I don't want to guess what it's  
3 for.

4 Q. Okay. Well, put a pin in it.

5 Then I'm jumping down half a page to line 41,  
6 "Contributed Income." These definitions of corporate --  
7 these appear to be line items for corporate donations,  
8 foundation donations, government donations and individual  
9 donations; is that correct?

10 A. That's correct, yes.

11 Q. And the definitions of those terms we previously  
12 discussed.

13 I'd like to direct your attention to the  
14 government donations, and I'm going to ask you to do a  
15 bit more math for me. So I can represent to you the  
16 percentages, if you'd like to do it yourself. I would  
17 like to know the -- or I know, but I would like to put on  
18 the record the percentage of government funding that  
19 Internet Archive has received as a fraction of its  
20 income.

21 A. 1.8 percent.

22 Q. That's what I got, too. Thanks.

23 So the government funding for Internet Archive  
24 between January 2011 and December 2020 is 1.8 percent of  
25 its total income; right?

1 A. That is correct.

2 Q. Great.

3 And these figures are accurate, to the best of  
4 your knowledge, based on Internet Archive's books?

5 A. They are.

6 Q. Okay. And can we roll down to page 3 and  
7 technology expenses. Oh, sorry. There's no pages on  
8 this. Can we roll down to technology expense? I think  
9 it's line 167 of the spreadsheet.

10 A. Yep.

11 Q. And you'll see there's expenses for bandwidth.  
12 Am I correct to assume that that is the money Internet  
13 Archive pays for the bandwidth required to transmit its  
14 services or website?

15 A. That is correct.

16 Q. And driver storage hardware, less than \$5,000,  
17 so this is expenses for drives and storage hardware that  
18 costs less than \$5,000; right?

19 A. That is correct.

20 Q. And then servers and hardware more than \$5,000  
21 is the price -- or any expenses for servers and hardware  
22 above that price; right?

23 A. Correct.

24 Q. And then there's miscellaneous hardware. Do you  
25 know what goes into the miscellaneous hardware category?

1           Q. And that sentence -- correct me if you disagree,  
2 but the plain meaning of that sentence: That the  
3 2.5 million ebooks in IA's collection is relevant to the  
4 credibility of the proposed solution in this application  
5 for a \$100 million grant?

6           MS. LANIER: Objection. Scope, calls for  
7 speculation.

8           THE WITNESS: Okay.

9           Q. BY MR. BROWNING: Do you agree?

10          MS. LANIER: Same objections.

11          THE WITNESS: I do.

12          Q. BY MR. BROWNING: Okay. Great. I think we can  
13 move on.

14          I'm going to ask you a general question,  
15 Jacques. Does Internet Archive monetize its website?

16          MS. LANIER: Objection. Scope --

17          THE WITNESS: What do you mean by "monetize"?

18          MS. LANIER: -- vague.

19          Q. BY MR. BROWNING: Monetize, as in collect  
20 revenue from.

21          A. From the website?

22          Q. Yes. Well, let's be specific. Let's talk about  
23 the OpenLibrary.org lending library. Is that monetized  
24 under the definition I just gave you?

25          A. I don't --

1 MS. LANIER: Same objection.

2 THE WITNESS: I don't believe it does.

3 MR. BROWNING: Okay. Carl, can you pull up Tab  
4 14, please.

5 (Exhibit 87, Screenshot, Open Library, marked  
6 for identification electronically by counsel.)

7 MR. MAZUREK: Okay. It should be in the shared  
8 folder, Exhibit 87.

9 THE WITNESS: Is that Exhibit 0087?

10 Q. BY MR. BROWNING: Yes. Sorry. It's slow on my  
11 end, so pull that up.

12 Okay. Jacques, is it up in front of you --

13 A. Yes.

14 Q. -- Exhibit 87?

15 I am going to represent to you that this is the  
16 page for a book being distributed through the lending  
17 library book. The book is called Wolf Hall. This is a  
18 printout of a web page on OpenLibrary.org.

19 Do you see towards the bottom of that front page  
20 where it says, "Buy this book"?

21 A. Where do you see that?

22 Q. Under "Check nearby libraries."

23 A. Oh, yeah. Okay.

24 Q. "Buy this book." And then it says, "Better  
25 World Books," and a price, Amazon, and if you follow it

1 through to the next page, Bookshop.org.

2 Do you see that?

3 A. I do.

4 Q. Okay. Under that it says, "When you buy books  
5 using these links, the Internet Archive may earn a small  
6 commission."

7 Do you see that?

8 A. I do.

9 Q. Is that not an example of Internet Archive  
10 monetizing this web page?

11 MS. LANIER: Objection. Scope.

12 THE WITNESS: Well, I mean, I didn't think of  
13 that.

14 Q. BY MR. BROWNING: That's not an answer to my  
15 question, so let's take a half step back.

16 This -- we discussed earlier Internet Archive's  
17 affiliate program. This is, as I understand it, part of  
18 Internet Archive's affiliate program, and the way that  
19 works is every time someone clicks through to one of  
20 those buy this book links, Internet Archive gets money.  
21 Is that your understanding of how that works?

22 A. Yes.

23 Q. So my question is: Do you now agree with me  
24 that Internet Archive monetizes the web pages on its  
25 lending library?

1 MS. LANIER: Objection. Scope, vague.

2 THE WITNESS: Just for the books, yes.

3 Q. BY MR. BROWNING: Great.

4 MR. BROWNING: Carl, could you pull up Tab 13,  
5 please?

6 MR. MAZUREK: Yes.

7 Sorry. One more minute. I'm having some  
8 technical difficulties.

9 MR. BROWNING: Sure. I'm frankly surprised it  
10 took this long for us to have technical difficulties, so  
11 it's completely understandable.

12 (Exhibit 88, Screenshot, Open Library, marked  
13 for identification electronically by counsel.)

14 MR. MAZUREK: Okay. I think the exhibit should  
15 be in the shared folder as Exhibit 88.

16 MR. BROWNING: Thank you, Carl.

17 Q. Jacques, after you've refreshed your browser,  
18 please pull up Exhibit 88 and let me know when you see  
19 it.

20 Do you have it up?

21 A. Yes.

22 Q. Does -- this Exhibit 88 is a copy of a web page  
23 on OpenLibrary.org, and the result of a search for Wolf  
24 Hall, which is a copyrighted book distributed through the  
25 lending library.

1 Jacques, do you see at the top right-hand corner  
2 there's a button that says, "Donate"?

3 A. Yes.

4 Q. And what happens if you click on that button, to  
5 the best of your knowledge?

6 MS. LANIER: Objection. Scope.

7 THE WITNESS: It takes you to the donate page.

8 Q. BY MR. BROWNING: And what can you do on the  
9 donate page?

10 A. You can donate --

11 MS. LANIER: Objection. Scope. Pardon me.

12 Objection. Scope.

13 THE WITNESS: You can -- you can donate to the  
14 Internet Archive.

15 Q. BY MR. BROWNING: Great.

16 So people who are using the lending library are  
17 given the option via the website to donate money to the  
18 Internet Archive; right?

19 MS. LANIER: Objection. Scope, mischaracterizes  
20 previous testimony.

21 THE WITNESS: I believe every single page of the  
22 website that you're looking at, Open Library or other,  
23 has a donate button on it.

24 Q. BY MR. BROWNING: Got it.

25 But someone who is looking to use the lending



1 library, specifically looking for this Wolf Hall book,  
2 would be presented with the donate button. We can agree  
3 on that; right?

4 A. Yes.

5 Q. And would you agree with me that this is another  
6 way in which Internet Archive monetizes its lending  
7 library web pages?

8 MS. LANIER: Objection. Scope, vague.

9 THE WITNESS: That is a very broad  
10 interpretation.

11 Q. BY MR. BROWNING: Of monetizing? You know, if  
12 you want to define it, but I mean, as I understand  
13 monetize is makes money from, and what -- you know, do  
14 you disagree with me that the donate button is not a way  
15 to make money from the lending library?

16 MS. LANIER: Same objection.

17 THE WITNESS: It's -- the donate button takes  
18 you to the general page of the Internet Archive, and it  
19 doesn't mean that the money that's being given would  
20 specifically go to the Open Library.

21 Q. BY MR. BROWNING: I understand that, but it will  
22 go to Internet Archive.

23 A. It will go to Internet Archive.

24 Q. Okay. So I'm going to have one more try at  
25 this. So would you agree with me that this web page is

1 monetized?

2 MS. LANIER: Objection. Scope, vague.

3 THE WITNESS: I mean, every single page of the  
4 Archive is monetized.

5 Q. BY MR. BROWNING: Okay. Mr. Cressaty, let's  
6 move on.

7 MR. BROWNING: Carl, there's going to be a jump  
8 here. Can we go to Tab 28, please?

9 MR. MAZUREK: Yes.

10 (Exhibit 89, INTARC00138102, marked for  
11 identification electronically by counsel.)

12 MR. MAZUREK: It should be in the shared folder.

13 Q. BY MR. BROWNING: And before I pull -- or we  
14 pull this up, Jacques, I have a question for you. Do you  
15 believe that Internet Archive is a public library?

16 A. I do.

17 Q. What is the basis for that belief?

18 A. We make the books available to patrons for free.

19 Q. Are you aware of Internet Archive being  
20 accredited as a library by any governmental institution?

21 A. Yes, I am.

22 MS. LANIER: Objection. Scope.

23 Q. BY MR. BROWNING: Who -- what -- tell me what  
24 you know about that.

25 MS. LANIER: Same objection.

1 Income Tax for Better World Libraries for 2019, also  
2 known as Form 990.

3 Q. Do you see this? Pardon me, Jacques?

4 A. I'm sorry, what is the exhibit number?

5 Q. Ninety-seven.

6 A. Okay.

7 Q. Sir, previously, Mr. Cressaty, we discussed  
8 Better World Libraries, and you testified that Better  
9 World Libraries is a company within the Austin Kahle  
10 Empire that purchased Better World Books; is that right?

11 MS. LANIER: Objection. Mischaracterizes  
12 previous testimony.

13 Q. BY MR. BROWNING: I think that's a perfectly  
14 fair characterization, but you can answer, Mr. Cressaty.  
15 And tell me if it's not.

16 A. Yes. It got the stock from the --

17 Q. Got it.

18 And Better World Books, is that a not-for-profit  
19 corporation or a for-profit corporation?

20 MS. LANIER: Objection. Scope.

21 THE WITNESS: It's a corporate -- it's an S  
22 corp.

23 Q. BY MR. BROWNING: What is an S corp?

24 A. An S corp is a corporation that has a public  
25 benefit scope. Or whatever you want to call it.

1 And so here I'm going to read some more, and  
2 we'll read slowly. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 Q. Okay. "As the only shareholder in Better World  
15 Books, Better World Libraries established a new and  
16 physically responsible board of directors and officers  
17 for Better World Books to safeguard their important  
18 Mission as a B corporation."

19 Who is on the new and fiscally responsible board  
20 of directors and officers for Better World Books?

21 MS. LANIER: Objection. Scope.

22 THE WITNESS: I think the old board had  
23 something, like, 12 people. The new board has Brewster,  
24 Kahle, Dustin -- I can't think of his last name.  
25 Hoffman, I think.

1 Q. BY MR. BROWNING: Holland?

2 A. I'm sorry? Holland? Yeah, Dustin Holland,  
3 who's the CEO. And Jim Michalko, I think, is on the  
4 board.

5 Q. Okay. So by my count, people affiliated with  
6 the Austin Kahle Empire have a controlling interest on  
7 the Better World Books' board; is that right?

8 MS. LANIER: Objection. Misstates previous  
9 testimony. Objection. Scope.

10 THE WITNESS: Yes.

11 Q. BY MR. BROWNING: You can answer. Yes.

12 A. Well, Dustin Holland doesn't, and I think  
13 Jim Michalko is the other director, but I can't -- my  
14 memory is failing me there.

15 Q. Sorry. Jim Michalko is or was a -- I don't know  
16 if he's a director or officer of Internet Archive; right?

17 A. No.

18 Q. Jim Michalko is affiliated with Internet  
19 Archive; right?

20 A. He was -- I believe he was a contractor for us  
21 at some point.

22 Q. Okay. But he had no connection with Better  
23 World Books before he was on the board for it; correct?

24 A. Say that again.

25 Q. Sure.

1 STATE OF CALIFORNIA ) ss:

2 COUNTY OF MARIN )  
3

4 I, LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462, do  
5 hereby certify:

6 That the foregoing deposition testimony was  
7 taken before me at the time and place therein set forth  
8 and at which time the witness was administered the oath;

9 That testimony of the witness and all objections  
10 made by counsel at the time of the examination were  
11 recorded stenographically by me, and were thereafter  
12 transcribed under my direction and supervision, and that  
13 the foregoing pages contain a full, true and accurate  
14 record of all proceedings and testimony to the best of my  
15 skill and ability.

16 I further certify that I am neither counsel for  
17 any party to said action, nor am I related to any party  
18 to said action, nor am I in any way interested in the  
19 outcome thereof.

20 IN WITNESS WHEREOF, I have subscribed my name  
21 this 28th day of October, 2021.  
22

23   
24

25 LESLIE ROCKWOOD ROSAS, RPR, CSR NO. 3462